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December 6, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

RE: Patricia Robinson v. PECO Energy Company
PUC Docket No.: C-2012-2300615

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the following documents in the matter referenced above.

—	Answer
<u>X</u>	Answer to Complainant's Petition for Reconsideration
—	Motion to Dismiss
—	Motion for Judgment on the Pleadings
—	Preliminary Objection
—	Exceptions
—	Reply Exceptions
—	Main Brief
—	Reply Petition

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,



Shawane Lee
Counsel for PECO Energy Company
SL/lo

cc: Patricia Robinson

ANSWER OF PECO ENERGY COMPANY
TO COMPLAINANT'S PETITION FOR RECONSIDERATION

PECO Energy Company ("PECO Energy") hereby replies to the Petition for Reconsideration filed by Patricia Robinson ("Complainant") in the above-referenced matter on November 9, 2012. The Petition for Reconsideration was served on PECO Energy by the Complainant on November 27, 2012. On April 20, 2012, Complainant filed a formal complaint against PECO Energy. In her formal complaint, Complainant alleges there are incorrect charges on her bill. Respondent, PECO Energy filed an Answer on May 7, 2012, denying the allegations in the Complainant's formal complaint. On June 4, 2012, the PUC mailed the parties an Initial Hearing Notice, advising of the date, time and location of the hearing. On June 5, 2012, Administrative Law Darlene D. Heep issued a Prehearing Order, advising of the date and time of the scheduled hearing. The hearing was scheduled to take place on July 23, 2012 at 10:00 a.m.

PECO Energy prepared a high bill field technician and regulatory assessor to testify at the hearing. The morning of July 23, 2012, the Complainant requested a continuance due to illness. ALJ Heep granted the Complainant's request and the hearing was continued. On July 24, 2012, the PUC mailed the parties a Notice and Prehearing Order, advising that the hearing was continued until August 1, 2012 at 10:00 a.m.

On August 1, 2012 at 10:00 a.m., the hearing convened before ALJ Heep. The Complainant failed to appear for the hearing. PECO Energy requested dismissal of the Complainant's formal complaint with prejudice for failure to prosecute.

On August 23, 2012, ALJ Heep issued an initial decision in the matter of *Patricia Robinson v. PECO Energy. Co.*, C-2012-2300615 ("Initial Decision"). The Initial Decision ordered dismissal of the formal complaint with prejudice for failure to prosecute. The Initial Decision is well-reasoned with ample support from the record. As detailed in the Initial

Decision, the PUC mailed the parties a notice that the hearing for this matter would take place on August 1, 2012 at 10:00 a.m. PECO Energy appeared for the hearing with its two witnesses, ready to put on its case. Complainant did not appear.

On November 9, 2012, the Commission issued a Final Order, adopting ALJ Heep's Initial Decision and dismissed the Complainant with prejudice for failure to prosecute. On November 24, 2012, the Complainant filed a Petition for Reconsideration of the Commission's Final Order. PECO Energy respectfully requests that the Complainant's Petition for Reconsideration be dismissed because ALJ Heep's Initial Decision and Final Order properly dismissed Complainant's formal complaint for her failure to appear for an in-person hearing.

Complainant's Failure to Appear for Hearings Despite Proper Notice

Administrative agencies of the Commonwealth of Pennsylvania, such as the Public Utility Commission ("PUC"), are required to provide due process to the parties appearing before them.¹ The due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.²

Once the PUC meets its due process requirement, the burden falls upon the parties to appear and participate in the hearing.³ As mandated by the Pennsylvania Public Utility Code:

Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused, unless the

¹ See *Brown v. PECO Energy Co.*, no. C-2008-2060121, Initial Decision at 7 (Pa. P.U.C. May 18, 2009) (Chestnut, J.) (citing *Schneider v. Pa. P.U.C.*, 479 A.2d 10 (Pa. Cmwith. 1984)).

² See *id.*

³ See, e.g., *Mumma v. PPL Elec. Util. Corp.*, No. C-00014869 (Jan. 24, 2002) ("It is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing.").

presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination.⁴

The PUC satisfied its due process requirement by mailing Complainant the hearing notice on July 24, 2012. The hearing notice was not returned by the United States Postal Service as undeliverable. The notice is therefore presumed to have been received.⁵ Complainant also received notice when ALJ Heep mailed Complainant a prehearing order on July 24, 2012. By failing to appear at the August 1, 2012, hearing, Complainant waived her opportunity to participate in the hearing and cannot now reopen the record without proof that her failure to appear was unavoidable and that the interest of PECO Energy and the public interest will not be prejudiced.

Complainant's purported justification for failing to appear cannot satisfy this heightened standard. Complainant states that she did not appear for the hearing because of illness. Yet the Complainant did not attach any hospital admission documentation, doctor's notes or any other documentation to support the fact that she was ill at the time of the hearing. The Complainant also states that she did not appear because she did not receive notice of the rescheduled hearing. The July 24, 2012, hearing notice was sent to the same address as the first hearing notice. For the first hearing scheduled to take place July 23, 2012, the Complainant contacted ALJ Heep to state that she was ill and could not attend the hearing. Accordingly, she received the first hearing notice at her home address. This indicates there were no issues with the postal service delivering the notice to the wrong address. Yet inexplicably, the Complainant does not receive the second hearing notice at the same address. The fact that she received the first hearing notice

⁴ 66 Pa. C.S. 332(f) (emphasis added).

⁵ See *Brown v. PECO Energy*, at 7 ("Notice mailed to a party's last known address and not returned by the post office is presumed to have been received.") (citing *Meierdierck v. Miller*, 394 Pa. 484 (Pa. 1959), among others).

implicitly raises the presumption that she received the second notice. As described above, Complainant was mailed a formal hearing notice from the PUC and a pre-hearing order from ALJ Heep on July 24, 2012. Despite this, the Complainant failed to request a continuance of this matter. Plainly, Complainant's participation in the hearing was not "unavoidable."⁶ The Complainant had ample time to inform the Commission and PECO Energy that she would require a continuance. Complainant should have notified the Commission of her alleged illness. No such notice was provided. Again, Complainant cannot establish that her failure to appear was "unavoidable."

Complainant also cannot establish that a reopening of the proceeding would not prejudice the public's or PECO Energy's interests. PECO Energy should not be prejudiced by having to expend an inordinate amount of its resources to prepare for hearings in which the Complainant does not appear. PECO Energy had to prepare its witnesses for this case on two separate occasions. The witnesses had to be removed from their duties at the company in order to testify. On both occasions no hearing occurred because the Complainant did show up. Nor should the public be prejudiced by the Complainant's wasteful use of the PUC's and utility company's resources. Accordingly, the Initial Decision properly dismissed the formal complaint in this matter with prejudice.

WHEREFORE, For the reasons set forth above, PECO respectfully requests that the Commission deny the Complainant's Petition for Reconsideration on the merits and issue an Order upholding the Initial Decision and Final Order in its entirety.

⁶ 66 Pa. C.S. 332(f).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Shawane L. Lee', with a stylized, cursive script.

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